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TALF Borrower Eligibility and New York Fed Due Diligence Policy

Federal Reserve System: Federal Reserve Bank of New York

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TERM ASSET-BACKED SECURITIES LOAN FACILITY BORROWER ELIGIBILITY AND FRBNY DUE DILIGENCE POLICY

I. Introduction

This Policy is designed to provide guidance for each TALF Agent¹ that intends to make a loan request on behalf of a potential Borrower to the Federal Reserve Bank of New York's (the "FRBNY") Term Asset-backed Securities Loan Facility ("TALF"). Under the TALF, the FRBNY relies in substantial part on the KYC Programs of each TALF Agent and has high expectations that each TALF Agent will guard the reputation of its firm and maintain the public confidence in the Federal Reserve in the discharge of its responsibilities with respect to the TALF. "KYC Programs" include a TALF Agent's Customer Identification Program, Customer Due Diligence, Customer Risk Rating policies and procedures and, as applicable, Enhanced Due Diligence.

This Policy is neither intended to alter existing legal obligations or supervisory expectations placed by the applicable supervisory agencies on the TALF Agents, nor designed to prescribe acceptable policies, procedures or practices. Rather, this Policy is intended solely to elaborate on provisions outlined in the TALF's MLSA,² and provide a framework for information regarding potential Borrowers to flow to the FRBNY.

Terms not defined in this Policy have the meanings given to them in the TALF's MLSA.

II. Borrower Eligibility

A. General Obligation

As part of their general obligations under the TALF Standing Loan Facility Procedures, each TALF Agent will:

¹ A "TALF Agent" means each financial institution appearing from time to time on the list of Eligible TALF Agents available in the TALF Standing Loan Facility Procedures under the link "Eligible TALF Agents" that has become a party to the Master Loan and Security Agreement, individually and as agent for its Applicable Borrowers.

² Master Loan and Security Agreement, as amended from time to time, among the Federal Reserve Bank of New York, the TALF Agents, the Applicable Borrowers and the Bank of New York Mellon in connection with the Term Asset-Backed Securities Loan Facility (the "MLSA"). The MLSA may be accessed from the TALF website's Documents and Forms section at: http://www.newyorkfed.org/markets/TALF_MLSA.pdf.

- 1) Exercise reasonable care to ensure that each customer³ who requests a TALF loan is an Eligible Borrower and obtain information sufficient to make such determination;
- 2) Ensure that each customer who requests a TALF loan is subject to the TALF Agent's KYC Program;
- 3) For purposes of its KYC Program, "look through" each customer that requests a TALF loan to determine such customer's underlying Material Investors⁴ and Principals⁵ and subject such Material Investors and Principals to the TALF Agent's KYC Program; and
- 4) Comply with the requirements of the Office of Foreign Assets Control.

In addition, prior to requesting a new TALF loan for a customer that has already borrowed from TALF, a TALF Agent is required to conduct a review of the existing Borrower and to establish if there have been material changes in its ownership and/or control structure (e.g., there are new Material Investors or Principals), overall nature of business (e.g., acquisitions of competitor's business, large expansion to new geographies, bankruptcies, etc.), or if any of the Borrower or its Material Investors or Principals has been subject to recent regulatory action, is under civil or criminal investigation or has had material negative information published about it.

Finally, each TALF Agent is expected to conduct periodic KYC reviews on a schedule defined by a risk-based due diligence policy. Irrespective of such a policy, each TALF Agent must update Applicable Borrower information not less than bi-annually, or more frequently if required by its KYC Program, to monitor any changes in the profiles of TALF Borrowers as long as the Borrowers have outstanding obligations to the TALF.

Nothing in this Section limits a TALF Agent's option to refuse access to the TALF to any entity based on any aspect of the TALF Agent's KYC Program or for any other business reason. Should a TALF Agent make a determination to refuse an entity access to TALF for any reason it must disclose to FRBNY the name of the entity and the rationale behind the refusal of access to TALF.

B. Suitability of Investment

Each TALF Agent will make a determination based on its existing policies and guidelines as to whether participation in the TALF by a potential Borrower is a suitable endeavor for such potential Borrower.

³ For the purposes of the TALF program, any TALF borrower must be a customer of the TALF Agent and accordingly must go through the TALF Agent's customer on-boarding process.

⁴ A "Material Investor" is a Person who owns, directly or indirectly, an interest in any class of securities of a customer that is greater than or equal to a 10% interest in such outstanding class of securities.

⁵ "Principals" includes the sponsor of a potential Borrower and any Person with Control over a potential Borrower.

III. Description of Know Your Customer Program

Each TALF Agent will provide the FRBNY Compliance Function with copies of the TALF Agent's KYC Program and information sufficient to describe the TALF Agent's process and criteria for determining whether a potential Borrower will be identified as a Specified Borrower. TALF Agents also will be responsible for communicating to FRBNY Compliance any material changes made to their KYC Program while the TALF Agent is a TALF participant.

IV. Escalation to FRBNY of Information Relating to Specified Borrowers

A. Definition of Specified Borrower

"Specified Borrower" refers to a Borrower, if such Borrower or any Material Investor or Principals in such Borrower, is one or more of the following:

- 1) A customer of a TALF Agent who is or was subject to the TALF Agent's enhanced due diligence procedures, whether required by law or otherwise;
- 2) A customer of a TALF Agent who is specially monitored by such TALF Agent due to activity that has warranted reporting or enhanced scrutiny;
- 3) A customer against whom the TALF Agent has otherwise taken action under its anti-money laundering program, such as restricting such customer's account activity or closing one or more of the customer's accounts; or
- 4) Any customer whom the TALF Agent determines, in its discretion, to bring to FRBNY's attention for the purposes of this Policy.

B. General Standard

Before the Loan Subscription Date, each TALF Agent shall communicate to FRBNY Compliance information relating to any potential Borrowers identified as Specified Borrowers. Information and documentation provided to FRBNY Compliance must include:

- 1) A complete TALF Borrower Due Diligence Form⁶; and
- 2) A copy of the Borrower's KYC file (in electronic form) as compiled by the TALF Agent according to its KYC Program.⁷

⁶ FRBNY has developed and provided participating TALF Agents with the Borrower Due Diligence Form that requires disclosure of relevant information about the Specified Borrower to assist FRBNY in conducting its due diligence.

⁷ For the purposes of TALF, TALF Agents are required to provide a copy of all the KYC information that was collected (such as name, address, source of wealth, dates of birth, tax IDs, information on the business of the customer, etc.) for the customer which is deemed to be a Specified Borrower and its associated parties as well as supporting documentation that was used to verify its identity (such as formation documents, W-9s, IDs, etc.). The TALF Agents are not required to submit records of all negative news and background checks that were conducted unless there is evidence of material negative information related to the Specified Borrower.

FRBNY expects decisions regarding whether or not a potential Borrower is deemed a Specified Borrower to be based on reasonably current information, and that enhanced due diligence will be performed, as appropriate. Communications made pursuant to this Section should be made to FRBNY via secured email to talf.compliance@ny.frb.org.⁸

C. On-Going KYC Due Diligence

FRBNY expects that each TALF Agent will apply its KYC Program to each Borrower and Material Investor and Principals in such Borrower on an on-going basis. Borrowers are required to immediately escalate to the TALF Agent information regarding any investor in such Borrower who becomes a Material Investor in such Borrower. Upon receipt of such information, the TALF Agent will subject the Material Investor to its KYC Program and immediately escalate to FRBNY information regarding any Material Investor who had they been a Material Investor in the Borrower at the time of the TALF loan would have caused such Borrower to be a Specified Borrower.

V. Determinations Made by FRBNY Compliance

FRBNY Compliance will determine whether potential Borrowers identified as Specified Borrowers will be permitted to participate in the TALF. If FRBNY Compliance determines that a potential Borrower will not be permitted to participate in the TALF, FRBNY Compliance will inform the TALF Agent of such determination, which will be made in no fewer than two (2) full business days from receipt of information designated in Section IV.

If a TALF Agent is informed that a potential Borrower or one or more of its Material Investors or Principals has not been authorized to participate in the TALF, such TALF Agent will not knowingly act as TALF Agent on behalf of such potential Borrower to gain access to the TALF.

Each TALF Agent will provide FRBNY with the name and contact information of an individual who will serve as a point of contact for any issues that arise with respect to a Specified Borrower. Should FRBNY Compliance require additional information with respect to a Borrower, FRBNY Compliance will contact such point of contact.

VI. Annual Certification

Each TALF Agent will certify to the FRBNY annually that:

- 1) It is a financial institution subject to regulation by a Federal functional regulator;
- 2) It has implemented an anti-money laundering program pursuant to requirements issued by such regulator pursuant to 31U.S.C. §5318(h);

⁸ In order to send and receive secure email to and from the FRBNY each TALF Agent must have an FRSecure account.

3) The TALF Agent (or its agent) will perform all aspects of its KYC Program with respect to each potential Borrower; and

4) It is aware that any TALF loans made by FRBNY are made in reliance on the representations and warranties made by the TALF Agent in Section 10.2(d) of the MLSA⁹.

VII. Maintenance of Records, Reporting, Inspection and Confidentiality

A. Maintenance of Records

Potential Borrowers are required to enter into an agreement with the TALF Agent to provide all information required or reasonably requested by the TALF Agent to comply with the MLSA and the TALF Agent's KYC Program and anti-money laundering compliance program, and authorize the TALF Agent to provide such information to FRBNY upon request. Each TALF Agent will maintain files on each Borrower, and its respective Material Investors and Principals, in a manner that may be periodically inspected by FRBNY Compliance. Such files will be maintained by the TALF Agent for at least five (5) years after: 1) a TALF Borrower's loan is repaid; or 2) a TALF Borrower transfers its interest in the securities purchased with the TALF loan, or forfeits its rights to such securities. Nothing in this Section exempts a TALF Agent from any additional record-keeping requirements contained in SEC Rule 17a-4 or Part 103 of Title 31 of the Code of Federal Regulations, or any other law or regulation.

B. Reporting and Inspection

Each TALF Agent will: 1) provide FRBNY with any reports or information that it reasonably requests with respect to any Borrower; 2) permit FRBNY and any agents or representatives designated by the FRBNY, including representatives of the Board of Governors of the Federal Reserve System (the "Board"), to visit, audit and inspect the records maintained by such TALF Agent on any Borrower as well as evaluate key elements of its compliance program during normal business hours; and 3) permit FRBNY to make extracts from and copies of such records.

⁹ The following representations and warranties are made by the TALF Agent in Section 10.2(d): 1) the TALF Agent is subject to a rule implementing 31 U.S.C. § 5318(h) and maintains an anti-money laundering program compliant with the requirements of the USA PATRIOT Act and the rules thereunder; 2) the TALF Agent is regulated by a Federal functional regulator; 3) the TALF Agent has implemented a customer identification program compliant with Section 326 of the Act that enables such TALF Agent to form a reasonable belief that it knows the true identity of its customers, including Potential Borrowers, which includes procedures to obtain information from and verify the identity of customers, maintain records of the information used to verify identity, determine whether any customer appears on any government list of known or suspected terrorists or terrorist organizations, and provide customers with adequate notice that the institution is requesting information to verify their identities; 4) the TALF Agent has implemented risk-based due diligence procedures designed to identify high risk customers; and 5) the TALF Agent is in compliance with its anti-money laundering program and its customer identification program in all material respects.

C. Confidentiality

FRBNY will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents to hold, in confidence all non-public information concerning any loan to any Borrower as well as any additional information on its Material Investors, Principals and principal officers of such Borrowers, furnished or made available to it by such Borrower or the TALF Agent acting on its behalf, or their respective agents or representatives pursuant to the lending agreement except to the extent necessary or desirable for FRBNY to enforce any of its legal rights or remedies under the lending agreement; provided that nothing will prevent FRBNY from disclosing any information described in this Subsection: 1) to the Board or to the United States Department of the Treasury or any of their respective oversight bodies upon any of their request or demand; or 2) to the extent required by applicable laws or regulations or by any subpoena or similar legal process.